

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

June 5, 2001

GSBCA 15416-TRAV

In the Matter of HARRY NADAL

Harry Nadal, Aiken, SC, Claimant.

Renee R. Alvis, Director, Finance Division, Savannah River Operations Office,
Department of Energy, Aiken, SC, appearing for Department of Energy.

HYATT, Board Judge.

Claimant, Harry Nadal, was authorized by the Department of Energy (DOE) to attend a conference in Orlando, Florida, during the period from July 31 to August 3, 2000. The workshop, sponsored by Chem-Nuclear Systems, was held at the Embassy Suites Lake Buena Vista in Orlando. Claimant's attendance at the conference was approved by DOE in June 2000. His travel orders approved use of a personally owned vehicle (POV) to drive to the conference.

On July 10, 2000, claimant submitted a written request for excess lodging per diem. The rooms reserved at the hotel by the sponsor of the conference were \$125 per night, considerably more expensive than the maximum lodging per diem rate of \$77 per night. Claimant checked in the immediate vicinity of the conference for a hotel with lower rates. He states that he did not find anything he considered to be conveniently close to the conference location and thus opted to reserve a room through the training provider at the Embassy Suites. On July 11, 2000, in response to Mr. Nadal's request for approval of additional lodging reimbursement, claimant's supervisor responded that the difference between the per diem and the hotel rate was excessive and suggested as an alternative that he locate a less expensive hotel within the per diem rate.

Mr. Nadal states that he and the agency training coordinator both made several calls to area hotels in an attempt to procure lodging at a lower rate. Claimant does not identify what hotels they called or where the hotels were located in reference to the conference. According to claimant, the hotels called either did not have rooms available, were more expensive than the Embassy Suites, or did not have a Government rate. One week prior to

the conference, claimant was unexpectedly sent out of town to another meeting. He says that because of this he was unable to follow up on his request for approval of payment for the excess cost of lodging at the Buena Vista Embassy Suites. He returned from this assignment on Friday, July 28 and departed for Orlando on Sunday, July 30. At that point, claimant considered that he had two alternatives: (1) to cancel the training, which could result in causing the agency to forfeit the registration fee, or (2) to attend the training and hope to be reimbursed the additional hotel costs. He decided to attend the conference and hope to be reimbursed the added cost of lodging.

Following his attendance at the workshop, Mr. Nadal asked the agency to reconsider approving the actual cost of the hotel room. He met with the agency's deputy chief financial officer, who is responsible for approving actual per diem expenses under the agency's internal procedures. He was told that since his supervisor had not concurred in the request it would be denied. It was pointed out that the request for reimbursement of the actual cost of lodging had been denied in advance of the workshop.

Mr. Nadal has requested that the Board review the agency's disallowance of the difference between the per diem lodging rate and the actual rate he paid to stay at the Embassy Suites.

Discussion

As a general rule, reimbursement for lodging and meal costs incurred by Government employees while traveling on official business is paid through a "per diem allowance." 5 U.S.C. § 5702(a)(1)(A) (1994). Under the Federal Travel Regulation (FTR), the methods of reimbursement of per diem expenses include the lodgings-plus per diem method and the actual expense per diem method. 41 CFR 301-11.5 (2000). Here, the agency approved reimbursement under the lodgings-plus method, under which the actual lodging cost, not to exceed the maximum rate established for the temporary duty location, will be reimbursed. Under the actual expenses method, an employee on official travel may be reimbursed the full actual cost of lodgings limited to a ceiling of 300% of the applicable maximum per diem rate, or such lesser percentage as the agency may authorize. 41 CFR 301-11.303. Claimant requested approval of reimbursement under the actual expense method because hotel rates in the immediate vicinity of the conference he planned to attend were substantially higher than the maximum per diem rate established for lodging in the Orlando area generally.

The FTR provides that the agency may approve reimbursement under the actual expense method when lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference, or training session will be held; when costs of lodging and meals have escalated as a result of a special event (e.g., sporting events like the Olympics, conventions, and the like) and costs to commute from a nearby location would consume most or all of the savings achieved by occupying less expensive lodging; or when the method is justified by mission requirements. 41 CFR 301-11.300. The regulations also provide that approval for this method of reimbursement should ordinarily be obtained in advance of travel, but that the agency may authorize payment of actual expenses subsequent to performance of travel when supported by an explanation acceptable to the agency. 41 CFR 301-11.302. Prior to the travel, Mr. Nadal's immediate supervisor declined to approve

the actual expense method, however, suggesting that it would be more cost effective to find lodging further away and rent a car to cover the cost of transportation.

The Board has addressed only one other instance in which an agency has declined to approve the actual expense method after travel has been performed. In E. Patricia Liegey, GSBCA 14964-TRAV, et al., 99-2 BCA ¶ 30,483, reconsideration denied, 00-1 BCA ¶ 30,654 (1999), the travelers had attended a week-long conference in St. Petersburg, Florida. Their travel orders had erroneously approved reimbursement of a per diem rate which included the amount of \$103 per night for lodging. Midway during the week, the employees learned that the proper lodging rate had recently been lowered by the General Services Administration (GSA) to \$59 per night. The agency denied the employees' request for actual expenses. The employees, in support of their request, stated that upon their return they had tried to locate hotel rooms in St. Petersburg at the \$59 rate and had not been able to do so. The agency offered no rebuttal evidence that less expensive rooms were available to the travelers. Moreover, after a short time GSA restored the rate to \$105, suggesting that rate had been adjusted because of the lack of accommodations at the lower rate. Noting these extenuating circumstances, the Board concluded that the agency's refusal to permit reimbursement of actual expenses was an abuse of discretion.

The rationale of Liegey is inapposite here. The lodging options reflected on the form submitted by claimant to support his request for reimbursement of actual expenses were for hotels located in the same immediate area as the conference hotel. There is no evidence in the record showing what alternatives Mr. Nadal and the training coordinator explored after receiving the supervisor's rejection of the request for use of the actual expense method. More significantly, claimant did not follow through with his supervisor prior to attending the conference to state that he had not located less expensive lodging alternatives, thus allowing the supervisor to address the situation appropriately. Although we recognize that Mr. Nadal was on travel the week prior to the conference, under the circumstances he should have made some effort to obtain guidance from his supervisor rather than simply deciding on his own to attend the training session and incur the increased expenditures. Unlike the travelers in Liegey, who did not know in advance that their lodging costs would exceed the maximum per diem rate, and whose travel orders reflected an erroneously high per diem rate, Mr. Nadal knew prior to attending the conference that his request for the actual expense method of reimbursement had been denied and that he might not be fully reimbursed if he stayed at the conference hotel. We cannot conclude that, under these circumstances, the agency has abused its discretion in declining to approve this method of reimbursement.

CATHERINE B. HYATT
Board Judge